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SUBJECT: SIXTH TIFA ADVANCES TRADE DIALOGUE WITH
TURKEY

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2175, D) 08 ANKARA 2191, E) ANKARA 48

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¶1. (SBU) Summary: The sixth meeting of the U.S.-Turkey Trade and Investment Framework Agreement (TIFA) Council held January 13 in Ankara was an opportunity for the U.S. and Turkey to discuss ways to further advance the bilateral trade relationship and to enhance cooperation in regional efforts. The delegations examined various IPR issues and agricultural and commercial market access concerns, but also spent time exploring possibilities for cooperation in third countries and at the WTO. Both sides left with a greater understanding of the other's views and a renewed interest in cooperating on trade and investment issues. End summary.

¶2. (SBU) The sixth meeting of the US-Turkey Trade and Investment Framework Agreement (TIFA) Council convened January 13 in Ankara, following a meeting with the U.S. business community in Istanbul on January 12 (Ref A). Assistant USTR Christopher Wilson led the U.S. delegation, which included representatives from USTR and the Departments of State, Commerce and Agriculture. GOT Foreign Trade Deputy Undersecretary Ulker Guzel led the Turkish delegation, which included representatives of the Ministries of Health, Culture and Tourism, Justice, Finance, Agriculture and Foreign Affairs, the Turkish Patent Institute (TPI), and the Union of Chambers and Commodity Exchanges of Turkey (TOBB).

¶3. (SBU) Guzel opened the meeting with a discussion of how Turkey has moved from a relatively closed economy to one led by export growth in a range of diversified products and markets, with total trade now at USD 330 billion per year (of which 16.2 billion is with the United States). She also noted the recent shift in trade with the U.S., with exports to the U.S. on the decline and imports shooting up sharply. Explaining this as mostly a function of the

dollar-lira rate, she worried that the global crisis would offset the export gains that Turkey would normally expect from the now weaker lira. She noted that Turkey's chief concerns for the bilateral trade relationship involve continuation of Turkey's participation in the Generalized System of Preferences (GSP), the implementation of the Container Security Initiative (CSI) and/or the Secure Freight Initiative (SFI), and the eventual removal of Turkey from the Special 301 Watch List.

¶4. (SBU) Noting that the U.S.-Turkey TIFA was now in its tenth year, Wilson congratulated Turkey on the impressive improvements in its regulatory environment over that period. He also described the timing of the meeting as opportune, taking place just one week before the transition to a new U.S. administration. He noted that the ten-year mark is also a good time to think about how to move the TIFA talks from being a meeting focused on trade complaints to a strategic discussion about how to deepen the trade relationship.

Effects of the Global Crisis

¶5. (SBU) Both sides discussed how the crisis is impacting their domestic economies. Yuksel Akca, DDG of Agreements at the Foreign Trade Undersecretariat (FTU), observed that while Turkey was initially shielded from the crisis by the banking reforms it undertook in 2002, the crisis' effects began to show in the fourth quarter 2008. Exports decreased 14.7 percent in Q4 2008, while imports fell 21.6 percent (partially as a result of lower energy prices). The

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automotive sector (35.4 percent decrease), textile sector (25.4 percent), and hazelnut exporters (38.3 percent) were especially hard hit. After years of steady growth, expectations are that growth will be flat at best in 2009.

¶6. (SBU) Wilson described the U.S. policy response to the economic crisis to date and stressed that pains were taken to ensure that stimulus and bailout programs did not violate WTO commitments. He urged Turkey to continue in its commitment to the G20 declaration on avoiding new protectionist measures in this time of crisis. The Turkish side was especially concerned about the automaker bailout, and noted that they would be following it carefully to ensure that it complied with the WTO. While they acknowledged that Turkish auto exports and imports to/from the U.S. are negligible, they pointed out that Turkish products compete with U.S. goods in third countries, and that the bailout could negatively impact their trade in those markets.

Intellectual Property Rights (IPR)

¶7. (SBU) Representatives from the Ministry of Justice, Ministry of Culture and Tourism, Customs Undersecretariat, and the Turkish Patent Institute (TPI) gave presentations on improvements in the IPR regime, most of which were reported in Refs B and C.

¶8. (SBU) Hulya Erbay, Customs Department Head, noted that three months after the new Customs Law is approved the GOT will enable a central, electronic database for rights holders to register their products (Note: The infrastructure is already in place pending approval of the law). Registration

will only need to be done once per year, and application can be made online or on paper to Customs HQ in Ankara. Customs officers around Turkey will be able to access the database online, easing the identification of violations. The data collected will also be analyzed to help target enforcement efforts.

¶9. (SBU) Serkan Ozkan, Patent Expert at TPI, provided highlights of the new Patent Law, which is still pending. When passed, it will: provide clarification on biotech patents, eliminate the non-examined patent system, move to an after-grant opposition system, improve the ability to conduct novelty search reports, and make allowances for re-establishment of rights lost due to missed due dates. Wilson welcomed these developments and urged passage of the law at the earliest opportunity, but expressed concern about provisions in the patent law that would restrict patent rights in free trade zones, make compulsory licensing easier, and reduce some penalties for infringement. The Turkish side responded that the lighter penalties would be applied to sellers, but that penalties would be increased for producers of infringing goods, reflecting a philosophical change in their enforcement focus.

¶10. (SBU) With regard to the cancellation of trademark cases reported in Refs D and E, Judge Hulya Cetin from the Ministry of Justice clarified that both previously adjudicated cases and the 9000 pending cases will be considered under the "unfair competition" provision of the commercial code. The new amendment to re-criminalize trademark violations was passed during the week following the TIFA.

¶11. (SBU) Wilson inquired about a pending regulatory change proposed by the Ministry of Health that would remove data exclusivity protection for combination pharmaceutical products (products involving more than one drug) and reduce the testing requirements for these products. Mahmut Tokac of the Ministry of

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Health denied that any change had been proposed, stated that European Union rules on combination products are unclear and that they are still awaiting a response from the EU. He then followed this assertion by stating that the new regulation (which he had just denied existed) would "clarify" protections by limiting them just to "molecules" rather than the ill-defined "products." Comment: Tokac's denial is bizarre, given that Post has a copy of the proposed regulation that was formally circulated to the pharmaceutical sector. His statement on the EU position on combination products is also strange, as the European Commission sent a letter on December 17, 2008 explicitly stating that combination products are covered under EU Directives. Post will follow up for clarification, possibly in conjunction with the EC delegation in Ankara. End comment.

¶12. (SBU) Wilson noted that while Turkey's IPR regime has improved markedly, issues remain with book and software piracy as well as data exclusivity. He offered to arrange videoconferences between USTR and Turkish IPR experts to look at issues of concern.

Other Pharmaceutical Issues

¶13. (SBU) In response to a U.S. concern about delays in the reimbursement of pharmaceutical products, the GOT noted that new legislation passed in October 2008

should reduce administrative delays, but that the Social Security Administration is still implementing the changes. Wilson urged the GOT to make the reimbursement procedure as transparent as possible. Wilson also requested clarification of a new rule requiring that labels on medical devices be written in Turkish as of January 1, 2009. The GOT promised to send more information to USTR.

Cooperative Opportunities

¶14. (SBU) In line with Wilson's call for the TIFA to look beyond just the bilateral relationship, the two delegations looked at various opportunities for cooperation, especially at the WTO. Hasan Yalcin, DDG of Agreements at FTU, noted that Turkey is preparing a summary of world literature on the impact of the removal of textile quotas for the WTO CTC (with the goal of addressing China's export practices), and asked for U.S. support and information for that project. Wilson expressed support for information sharing, but cautioned that care should be taken to avoid the appearance of ganging up. He also invited Turkey to consider joining as a co-complainant in any WTO case on Chinese export subsidies.

¶15. (SBU) Yalcin also asked for U.S. support and information on a WTO dispute resolution case that Turkey is preparing on the EU's restrictions on boron imports, specifically the information gathered by Rio Tinto when it was considering bringing a case. Wilson noted that the boron restrictions are tied to the larger issue of the need for the EU to base its regulations on scientific research, which is also of concern to the U.S. He undertook to investigate whether Rio Tinto would agree to share the information, but cautioned that it might be subject to confidentiality rules.

¶16. (SBU) Yalcin further requested U.S. support for a Turkish proposal on road transit liberalization at the WTO. Acknowledging that the U.S. has little direct interest, Yalcin argued that the U.S. should support the principle of liberalized transit and that the proposal would help U.S. exports and strategic

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interests in the landlocked countries of Central Asia. Wilson promised to respond as soon as possible, with the caveat that additional conversations might be required on transit restrictions related to legitimate road safety considerations.

¶17. (SBU) Yuksel Akca of FTU observed that U.S. and Turkish companies successfully cooperated on various construction projects in Iraq and Afghanistan and proposed looking at ways to deepen cooperation in construction projects in other third countries. Mark Mowrey of USTR noted that the role of the U.S. Government as a provider of funds in Iraq and Afghanistan was unique and so the dynamic would be different in other countries, but Commercial Counselor said that he would look at ways to encourage U.S. companies to meet with prospective Turkish partners before undertaking work in countries such as Georgia and Azerbaijan. He also promised to examine possibilities for holding a seminar for U.S. companies, similar to DOD seminars organized in the past.

¶18. (SBU) Akca also noted that Turkey would like to invite (at GOT expense) USG speakers on a variety of

topics to give seminars to Turkish officials businessmen on how to do business with the U.S. He noted that there is significant interest in U.S. customs procedures, agriculture regulations (esp. fruits and vegetables), consumer safety rules, and the Generalized System of Preferences. Wilson welcomed the concept and asked for a detailed proposal with dates, times, and topics.

Agricultural Issues

¶19. (SBU) Roger Wentzel of USTR thanked Turkey for the agreement to allow imports of live female breeding cattle and the recent agreement on a similar protocol for bulls. He noted with concern, however, that there continue to be reports of frequent delays in the issuance of control certificates for agricultural imports (often coinciding with the domestic harvest season for a given product), which should be a nearly automatic process. He also urged Turkey to be more diligent in notifying sanitary and phytosanitary (SPS) and technical barriers to trade (TBT) regulation changes to the WTO.

¶20. (SBU) Ministry of Agriculture and Rural Affairs (MARA) representatives insisted that control certificates are issued in a timely manner, noting that they face penalties if an application is not processed within 24 days. They blamed missing paperwork as the most frequent cause for delay. They acknowledged that they need to do a better job on SPS notification and stated that MARA staff will undergo WTO training in March on how to file notifications. They also observed that they publish draft regulations (in Turkish) on their website and that they regularly notify the EU of changes in product categories and would endeavor to be more active on the WTO side. Regarding technical barriers to trade (TBT), they noted that as the GOT is harmonizing its standards to meet EU specifications (which are already accepted as an "international standard"), they see no need to notify.

¶21. (SBU) Wilson noted that the EU is not Turkey's only trading partner and that WTO notification is important to create an open, transparent system. He also disputed the idea that EU legislation represents an "international standard." He requested a written explanation of licensing procedures, and asked whether the GOT could organize seminars for U.S. exporters.

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¶22. (SBU) The Turkish side asked about two proposals on the export of figs and pomegranates to the United States. Wilson noted that the applications were on track for priority consideration this year. In response to a U.S. inquiry, the Turkish side noted that within two weeks they would be delivering their response to the proposed U.S. memorandum of understanding on the WTO rice case.

¶23. (SBU) Wilson asked about a new requirement for textile exporters to register with the nearest Turkish Embassy or Consulate prior to February 1, expressing especial concern for products already en route. Yuksel Akca noted that this requirement is aimed at China and promised to investigate with FTU's Imports Department whether there is any way to provide an extension to the registration deadline. Agricultural Counselor promised to follow up directly with Akca.

Distilled Spirits

¶24. (SBU) Cherie Rusnak from Commerce asked for a clarification of Turkish requirements regarding the licensing and taxation of distilled spirits imports. Mehmet Erkan of the Ministry of Finance explained that the minimum tax rate for any given product (such as raki) is the same whether it is imported or exported, but that different products (such as raki and whiskey) are taxed at different rates. He also stated that the licensing procedure was somewhat streamlined in 2008. Previously all importers had to file with MARA and then be approved by the Tobacco and Alcohol Board. In 2008, this was changed to require notification to the Tobacco and Alcohol Board for statistical purposes, but not approval. Commerce noted that this still requires two different sets of paperwork, which leads to delays. Wilson suggested that the GOT might want to examine moving to a unified tax rate system based on alcohol content, since imported foreign varieties in many cases compete directly with local Turkish brands.

Reimportation of Leased Machinery

¶25. (SBU) The U.S. side inquired about a requirement that leased machinery be exported and re-imported every two years, describing it as an expensive prospect for some companies. FTU noted that this is a function of the Customs Law, which exempts leased products from duties. They suggested that any affected company could either sell the product or just pay the duty to avoid the reimportation requirement.

Trade Remedies

¶26. (SBU) Wilson observed that USTR was carefully following the recent Turkish imposition of a 24.1 percent antidumping duty on oriented strand board and noted that the issue might be raised at the next meeting of the WTO Rules Committee. The Turkish side thanked the U.S. for the termination of antidumping duties on rebar products and expressed hope that the duties on other steel products - some of them now 23 years old - would also be lifted.

GSP

¶27. (SBU) Guzel noted that Turkey views participation in the GSP as vitally important, as fully a quarter of Turkish exports to the U.S. benefited from the

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program in 2007 (USD 1.127 billion). While she regretted the exclusion of gold jewelry in 2008, which led to a decline of 17 percent in jewelry exports, she asked for a response to recent Turkish proposals to include high-density polyethylene and copper wire. Wilson noted that the removal of gold jewelry was a statutory requirement and that he expected a response on copper wire within the next few weeks and on polyethylene by the end of June.

CSI/SFI

¶28. (SBU) Guzel expressed concern about the potential impact of the 100 percent screening requirement of the CSI and SFI programs on Turkish exports. Wilson promised to have the Department of Homeland Security provide additional information and offered to brief the Turkish Embassy in Washington.

Shipping Issues

¶29. (SBU) FTU noted that one Turkish company would like to be able to ship empty containers from New Jersey to Georgia. Mark Mowrey of USTR observed that this is prohibited under the Jones Act, but that exceptions can be made on a reciprocal basis. He promised to provide a copy of an existing reciprocal agreement and encouraged FTU to follow up directly with State. FTU also complained that ship repairs done at Turkish shipyards carry a fifty percent duty when the ship returns to the U.S., putting Turkish shipyards at a substantial disadvantage compared to the duty-free treatment given to ships repaired in Israel, Mexico or Canada. USTR promised to investigate whether such treatment could be extended to Turkey.

Turkey-U.S. Trade: More Money, More Problems

¶30. (SBU) Guzel noted that when the Turkey-U.S. TIFA meetings began ten years ago the laundry list of contentious issues was much shorter. Observing that "The more two countries trade, the more problems arise," she was encouraged by the long list of issues addressed at this meeting because it meant that trade between the two countries had truly blossomed. Wilson agreed with this sentiment and again expressed his hope that TIFA would move beyond just a forum for resolving complaints and become a mechanism for strategically advancing the bilateral relationship, with the involvement of the private sector. Both sides agreed to the creation and possible publication of an Action Plan to help move forward the issues discussed at the meeting.

¶31. (U) This cable has been cleared by the delegation.

JEFFREY